

**SYNOPSIS OF AMENDMENT CHANGES TO MICHIGAN CONSTRUCTION LIEN ACT  
(PUBLIC ACT 497 & 572 of 2006)**

**General Changes:**

- A payment from the Homeowner Construction Lien Recovery Fund could not include interest on the unpaid principal amount due, including time price differential or a finance charge that accrued after 90 days after a claim of lien was recorded.
- Require that the person to establish that the contractor or subcontractor with whom the person claiming the construction lien is the same individual or business entity with whom the owner or lessee contracted. If a person who brings action to recover for the performance of an act or contract for which a license is required shall allege in the complaint and has the burden of proving that he or she was properly licensed.
- Increase the maximum Fund payment to subcontractors, suppliers, and laborers from \$75,000 to \$100,000 per residential structure.
- Require the Department of Labor and Economic Growth (DLEG) to maintain a website and post the name and license numbers of contractors that failed to pay subcontractors or suppliers, resulting in payment from the Fund.
- Require an owner or lessee or designee upon receipt of the sworn statement, to give notice in writing, by telephone or personally, to each subcontractor, supplier or laborer that provided a notice of furnishing or if notice of furnishing was excused by Section 570.1108 or 570.1108a, to each subcontractors, suppliers, or laborers named in the sworn statement (which a contractor must give to the owner or lessee when requesting payment), that the statement was received. If these subcontractors, suppliers, or laborers make a request for a copy of the sworn statement within 10 days after receiving notice, the owner, lessee or designee must provide a copy of the sworn statement to the requestor.
- Provide that an owner, lessee, or designee may not accept a full or partial waiver of lien from a person other than the lien claimant named in the waiver, without verifying its authenticity.
- Require the subcontractor, supplier or laborer who seeks to enforce a construction lien on a residential structure must join the Fund as a defendant party in the foreclosure action no later than one year after the date the claim of lien was recorded.
- Require owner, lessee or designee to attach a copy of written contract and any evidence of payment to the homeowners affidavit, as required in Section 570.1203
- Each Fund member must report any name, address or form of business organization change in writing to the Fund's office within 30 days of the change. Licensees, if required by law, must also notify the appropriate licensing agency.
- Allow the owner of residential property or a person affected by the lien, to bring an action to discharge a lien that has been recorded by an unlicensed person, and provide that the unlicensed person is liable to the plaintiff for all damages that result from the recording and any attempts to enforce the lien, including actual costs and legal fees.

- Eliminate the authority of the DLEG Director to require additional special assessments when the Fund balance was under \$1.0 million. The \$50 special assessment fee is being replaced with a \$10 per year membership renewal fee to be paid at the time of license renewals. Requires a \$10 per year membership renewal fee to be collected at the time of license renewal or on June 1<sup>st</sup> every three years. The renewal fee will be suspended if the Fund balance exceeds \$6 million, until it is under \$4 million.

#### Supplier Members:

- If a supplier conducts business from more than 1 retail location, each retail location is required to maintain a separate membership for the purposes of paying fees and renewal fees for Fund membership.
- Require a supplier to have documentary proof that he or she has obtained a credit application from the contractor or subcontractor before providing the material or equipment and if a corporation with publicly traded shares, obtain a credit report from a nationally or regionally recognized organization that provides credit ratings on business, or if not a corporation with publicly traded shares, obtain a credit report on the owner, qualifying officer, or principal partners, officers, shareholders or members of the subcontractor or contractor to determine the financial stability of the subcontractor or contractor. If the company is less than 4 years old, a personal guaranty from the owner or 1 or more of the partners, officers, directors, managing members, trustees or shareholders of the subcontractor or contractor. In order to recover from the Fund, the credit report shall not disclose any the following: insolvency at the time of application or had been within 2 years of the application; receivership or total delinquent judgments of more than \$1000.
- Limit payment to a supplier who did not require advance payment from a contractor or subcontractor who was already indebted to the supplier in an amount equal to or greater than the credit limit established by the supplier for the contractor or subcontractor when the material or equipment was supplied or, if the contractor or subcontractor was delinquent more than the following days following the first business day following the shipment of materials or equipment: in 2007, 180 days; in 2008, 150 days; in 2009, 120 days; in 2010 and subsequent years, 90 days, in paying a debt to the supplier at the time the material or equipment was supplied.
- Require laborers and other lien claimants (suppliers and non-licensed subcontractors) to pay a \$30 renewal fee on June 1<sup>st</sup> every three years. If initial membership in the Fund, prior to June 1, 2006, first renewal fee of \$30 will be due by June 1, 2009 and a \$30 renewal fee by June 1 every third year thereafter. A person paying the initial fee after June 1, 2006, must pay the \$30 renewal fee by the first June 1 following the third anniversary date of the initial payment and a \$30 renewal fee by June 1 of every third year after the first renewal payment. If after The membership renewal notice will be sent by ordinary mail to the last reported address.

#### Licensed Contractors:

- Require licensed contractors to pay a \$10 fee upon initial licensure and a \$10 fee for each year of license renewal, rather than a \$50 fee upon initial licensure, for deposit in the Homeowner Construction Lien Recovery Fund.

### **Homeowners/Lessees/Designees:**

- Upon receipt of a sworn statement from the contractor, notify each party who has sent a Notice of Furnishing or if a party is excused from a Notice of Furnishing to each party listed on the sworn statement in writing, by telephone or personal contact. If any notified party wishes to obtain a copy of the sworn statement, they must provide a request within 10 days after receiving the sworn statement, the owner, lessee or designee must provide a copy of the sworn statement.
- The homeowner, lessee or designee must include a copy of the written contract and any proof of payment to the contractor when submitting the homeowner's affidavit as pursuant to Section 570.1203.
- A homeowner on which a construction lien had been recorded by a person who was not licensed as required by this Act, or any person affected by the lien, could bring action to discharge the lien. If the court determines the person who recorded the lien was not licensed as required, that person could be liable for damages that resulted from the recording of the lien and any attempts to enforce the lien, including actual costs and legal fees.
- Provide that an owner, lessee or designee may not accept a full or partial waiver of lien from a person other than the lien claimant named in the waiver, without verifying its authenticity.

*Updated 1/31/2007*